

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION No. 8994 of 2011**

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**PUBLIC INFORMATION OFFICER AND PRINCIPAL INDRASINH P ZALA -**  
**Petitioner(s)**

**Versus**

**GUJARAT INFORMATION COMMISSION THROUGH CHIEF INFORMATION &**  
**2 - Respondent(s)**

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**Appearance :**

MR HEMANG R RAWAL for Petitioner(s) : 1,  
MR SHIVANG M SHAH for Respondent(s) : 1,  
MR ND SONGARA for Respondent(s) : 2,  
MR ROHAN YAGNIK, AGP for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE K.M.THAKER**

**Date : 11/10/2012**

**ORAL ORDER**

1. Heard Mr. Rawal, learned advocate for petitioner and Mr. Shivang M. Shah, learned advocate for respondent No.1 and Mr. Yagnik, learned A.G.P. for respondent No.3. Learned advocate for respondent no.2 is not present.

2. In present petition, the petitioner has prayed, inter alia, that:

"8(B)This Hon'ble Court may be pleased to issue writ of mandamus or writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside the order dated 18.06.2011 passed by the respondent No.1- Gujarat Information Commission in Complaint No.1352/2008-09 and further be pleased to dismiss the said complaint filed by the respondent no.2;"

3. By the impugned order the respondent no.1 has directed the concerned officer to ensure compliance of

the order dated 18.06.2011. The petitioner feels aggrieved by the said order because the respondent State Commission has also directed that the petitioner shall pay, as penalty, a sum of Rs.25,000/-.

4. The said order dated 18.06.2011 and the direction imposing penalty against present petitioner seems to have been passed in view of the fact that the respondent Commission has reached the conclusion that the petitioner herein is guilty of delay and default in supplying the details, documents and information asked for by present respondent No.2.

5. The facts which are relevant for and involved in present proceedings are that the respondent no.2 herein appears to have asked for certain details, documents and information vide application made under provisions of Right to Information Act, 2005. The petitioner herein, being the concerned Public Information Officer, in his capacity as Principal of the Democratic Higher Secondary School, was under statutory obligation to supply the details, information and documents asked for by the respondent No.2. It appears from the record and submissions by the learned counsel appearing for the contesting parties that the petitioner failed to supply, within prescribed time limit (and even thereafter) the documents, details and information asked for by the respondent no.2. Therefore, feeling aggrieved by the inaction on the part of the petitioner, present respondent No.2 preferred Appeal before the First Appellate Authority under the said Act. The said

proceedings resulted into direction to comply the requirements. The petitioner again failed to comply the said direction. Therefore, the respondent no.2 approached the respondent State Commission with appropriate application - Second Appeal. In the said proceedings, the respondent Commission passed the impugned order dated 18.06.2011 and directed the petitioner herein to comply the said requirement i.e. to supply the documents, details and information asked for by the respondent no.2 and also to pay penalty in sum of Rs.25,000/- for the delay and default caused in discharging his duties cast under the provisions of the Act.

6. Mr. Rawal, learned advocate for petitioner has assailed the order on the ground that it has been passed without sufficient opportunity of hearing and defence to the petitioner. In particular, grievance is made with regard to the proceedings said to have been held on 6<sup>th</sup> June 2011. It is the case of the petitioner that any intimation about the date of proceedings was not given to the petitioner and that therefore petitioner was not aware about the said date of hearing and consequently he could not remain present at the time of the proceedings and yet the impugned order came to be passed. Therefore, petitioner is deprived of reasonable and sufficient opportunity of hearing.

7. The contents of the impugned order dated 18.06.2011 leave enough room for doubt as regards the proceedings said to have been held on 6<sup>th</sup> June 2011

and also leave sufficient room for petitioner to allege and contend that the said date for proceedings was not intimated to the petitioner.

8. The petitioner has essentially assailed the impugned order only on the said ground because there is no denial of the fact that the details, documents and information asked for by the respondent no.2 was not supplied by the petitioner within specified time limit and the inaction on part of petitioner has resulted into default in view of the provisions contained under the Act. Not only this, but even after expiry of the time limit and until the impugned order dated 18.06.2011 came to be passed the petitioner had not supplied the demanded details, documents and information and even until now the details, documents and information are not supplied to the respondent No.2.

9. Under the circumstances, any other ground or details are not available to the petitioner to assail the impugned order at this stage.

10. Therefore, as mentioned above, the petitioner has concentrated only on the said ground and restricted his challenge against the order only on said ground.

11. Having regard to the dispute raised by the petitioner, this Court has directed the respondent No.1 to place on record the Rojkam (order sheet) and also directed the respondent No.1 to place on record any material from which it can be ascertained as to

whether intimation to the petitioner about the date of hearing i.e. 6th June 2011 was forwarded or not. The said order dated 19.07.2012 reads thus:

"It appears that the hearing before the Commissioner was scheduled on 8.4.2011. It is claimed that the proceedings were adjourned to 6.6.2011. The record also shows that on 6.6.2011, proceedings were conducted and were further adjourned to 17.6.2011. It is, however, case of the petitioner that any intimation that the hearing was scheduled for / was to be held on 6.6.2011 was not given to the petitioner. The record of the proceedings which are shown to the Court, contains copy of the order dated 6.6.2011, however, it does not contain any order dated 8.4.2011 adjourning the proceedings to 6.6.2011. There is also no entry in the Rojkam or any other order to demonstrate that the next date of hearing was scheduled for 6.6.2011 fixed and it was informed to the petitioner. Therefore, learned counsel appearing for the respondent shall place on record material to show that on 8.4.2011, any order about subsequent date was passed or by separate intimation was given to the petitioner, i.e. the petitioner was informed about the fact that the next date of hearing was scheduled on 6.6.2011. Such material will be placed on record on the next date of hearing.

S.O. to 27.7.2012."

12. In reply to the said direction, on behalf of respondent No.1 Commission, reply affidavit came to be filed by Deputy Secretary. Even after the said reply affidavit the aspect as regards the hearing held on 6th June 2011 has not become clear.

13. In the facts of the case the benefit of doubt must go to the petitioner.

14. Therefore, it is considered appropriate, in peculiar facts and circumstances of the case, to remand the matter to the respondent No.1 Commission, for further hearing only on the said limited and short



ground.

15. At this stage, what is relevant to mention is the fact that the petitioner has still not supplied the relevant and demanded documents, details and information asked for by the respondent No.2.

16. Therefore, it is clarified that present order will come into force only when the petitioner supplies all demanded details, documents and information to the respondent no.2 within two weeks from today.

17. The learned counsel for petitioner has stipulated and declared that the petitioner has already deposited Rs.25,000/- as per the direction in the impugned order.

18. Therefore, the said direction stands complied.

19. It would be for the respondent no.1 Commission to pass further orders as regards the said amount.

20. In view of the fact that there is room for doubt as regards the intimation of date of hearing to the petitioner in connection with the hearing held on 6<sup>th</sup> June 2011, the order is set aside and the case is remitted to the respondent No.1 Commission for further hearing.

21. The respondent No.1 Commission will intimate the petitioner, by Registered Post (Acknowledgment Due), the next date of hearing. If despite service of the

intimation the petitioner does not remain present then it will be open to the respondent Commission to proceed with the hearing in absence of the petitioner.

22. Necessary intimation shall also be forwarded to the respondent No.2.

23. At this stage, it appears necessary and appropriate to put a word of caution and suggestion to the respondent Commission that it is because of Commission's system of dispatching intimation of hearing/serving notice of hearing and because of its lack of system of maintaining record of service of notice that such situation arise. Hence, to avoid such type of allegation, it would be appropriate that the respondent Commission should forward every and all intimations - related to the proceedings of all cases to the contesting parties by Regd. Post as a regular procedure and it should preserve/maintain proof of service of intimations. It is hoped that respondent Commission shall take care of this aspect and shall follow the procedure of forwarding all intimations including intimation about the date and time of hearing to the concerned parties by Regd. Post.

24. For the foregoing discussion and reasons, below mentioned order is passed.

25. For the aforesaid short and limited reason the order dated 18.06.2011 is set aside. It is clarified that the Court has not entered into merits of the case and has not examined other aspects involved in the dispute. The respondent Commission shall hear the

petitioner and respondent No.2 and pass fresh order. The respondent Commission shall also pass appropriate orders as regards the amount deposited by the petitioner. The proceedings shall start from the stage where it was on 06.06.2011.

26. With the aforesaid clarification and direction the petition is partly allowed.

27. The Registry shall take steps to transmit the amount i.e. Rs.25000/-(Rupees twenty five thousand only) deposited by the petitioner on 1<sup>st</sup> October 2012, to the respondent No.1 Commission under appropriate advise and intimation.

**(K.M.THAKER, J.)**

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